



Docket No.: O2911.0007/P043-D
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#18
3-17-03

In re Reissue Patent Application of:
John R. Plate, et al.

Application No.: 09/335,377 ✓

Group Art Unit: 3611

Filed: June 17, 1999

Examiner: Eric D. Culbreth

For: FORKLIFT STABILIZING APPARATUS

REQUEST FOR RECONSIDERATION

Box AF
Commissioner for Patents
Washington, DC 20231

RECEIVED
MAR 14 2003
GROUP 3600

Dear Sir:

In response to the Office Action dated December 12, 2002 (Paper No.17), please reconsider the above-referenced application in light of the following remarks.

Claims 20-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Larverda (of record) in view of Van Der Lely et al., U.S. Patent No. 3,498,035 (hereinafter "Van Der Lely"). Reconsideration is respectfully requested.

Laverda refers to a device for automatic leveling of a threshing-harvesting machine. The Laverda combine has a body 1 with a front appendage 1a which is pivotally connected to a front axle 3. The body 1 has lateral brackets 4, 4' and cylinders 5, 5'. The Laverda machine also has a hydraulic system for automatically leveling the machine body 1. In particular, the Laverda machine has float switches 20, 21 and 20', 21' (Figure 2) which automatically close electro-valves 14, 18 when the body 1 of the machine inclines more than 10 degrees with respect to the horizontal.

Van Der Lely is directed toward a combine thrasher having a detachable mowing platform. The Van Der Lely removable mowing platform has a quick release mechanism for attaching and detaching the mowing platform. The mowing platform 1 is mounted to the forward end of the combine harvester, and is arranged on a housing 2. Column 1, lines 41-45. The Van Der Lely mowing platform 1 and housing 2 are upwardly and downwardly movable about a shaft 3 by means of a lifting cylinder. Van Der Lely says that the “housing 2 accommodates an elevator for feeding cut crop to a threshing drum.” Column 1, lines 43-45.

Applicant respectfully submits that it would not have been obvious to combine Laverda and Van Der Lely in the manner suggested in the Office Action. Laverda is directed to a harvester with a device for automatic leveling. The entirety of the Laverda disclosure is dedicated to the automatic leveling device. Nowhere in Laverda is mentioned an idea or desire to “include a support bearing a load pivoted on the frame as taught by Van Der Lely” as suggested in the Office Action. Van Der Lely is directed toward a harvester with a detachable mowing platform. The entirety of the Van Der Lely disclosure is dedicated to the detachable mowing platform. Van Der Lely does not mention or contemplate the idea of adding an automatic leveling system of Laverda. There is no reason or motivation anywhere in the record to combine an automatic leveling system and a detachable mowing platform.

MPEP § 2142 requires that suggestion or motivation to combine the references must be found “either in the references themselves or in the knowledge generally available ... in the art.” Likewise, the Federal Circuit has stated that in “holding an invention obvious in view of a combination of references, there must be some suggestion, motivation or teaching in the prior art that would have led a person ... to select the references and combine them.” Karsten Manufacturing Corp. v. Cleveland Golf Co., 242 F.3d 1376 (Fed. Cir. 2001). The Federal Circuit has also stated that “[r]arely ... will the skill in the art component operate to supply missing knowledge of the prior art to reach an obviousness judgement” Al-Site Corp. v. VSI International Inc., 174 F.3d 1308 (Fed. Cir. 1999).

The Office Action in this case used the Applicant's disclosure as the source of motivation to pick and choose elements from Laverda and Van Der Lely to arrive at the claimed invention. This is a hindsight-type rejection which is impermissible. The Federal Circuit has stated that it is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together teachings of the prior art so that the claimed invention is rendered obvious" In re Fritch, 972 F.2d 1260 (Fed. Cir. 1992).

Thus, the teachings of Laverda and Van Der Lely are not properly combinable under 35 U.S.C. § 103. For at least this reason, claims 20 and 21 should be allowed.

Further, even assuming that Laverda and Van Der Lely are properly combinable, and they are not as discussed above, the references still fail to teach or suggest all of the claim limitations.

Claim 20 recites a vehicle comprising a "support for supporting a load, [the] support being pivoted to elevate the load relative to [a] frame." The Office Action admits that Laverda does not teach this limitation, and for this shortcoming relies on Van Der Lely's disclosure of a "housing 2 supporting a load (mowing platform 1 and elevator at column 1, lines 43-45), the support being pivoted at shaft 3 to elevate the load 2 relative to the frame (column 1, lines 48-52)." Office Action, page 2.

Van Der Lely states that the "mowing platform 1 [is] ... arranged on an elevator housing 2. The housing 2 accommodates an elevator for feeding cut crop to a threshing drum." Column 1, lines 42-45. An elevator is not discussed beyond this statement, and is not shown in the Figures of Van Der Lely. From this statement alone it is not clear where the elevator is, whether it is part of the housing 2 or whether the housing 2 supports an elevator, or whether it is used in combination with the mowing platform 1 or instead of the mowing platform 1. The only other relevant statement from the Van Der Lely disclosure is that the "mowing platform 1 and housing 2 are upwardly and downwardly movable about said shaft 3 by means of a lifting cylinder (not shown) which extends between the frame of the combine harvester and the housing 2." Column 1, lines 48-51. This statement does

not teach or suggest a "support for supporting a load, [the] support being pivoted to elevate the load relative to [a] frame."

For this additional reason, claim 20 should be allowed. Claim 21 depends from claim 20 and contains every limitation of claim 21. Claim 21 should be allowable for at least the reasons for allowance of claim 20 recited above.

Applicants acknowledge with appreciation the allowance of claims 1-19 and 22-33. In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of claims 20 and 21 and pass this application to issue.

Dated: March 12, 2003

Respectfully submitted,

By Peter A. Veytsman # 45,920
Mark J. Thronson

Registration No.: 33,082

Peter A. Veytsman

Registration No.: 45,920

DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP

2101 L Street NW

Washington, DC 20037-1526

(202) 785-9700

Attorneys for Applicant